

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

PELLE PELLE, INC.,
Plaintiff,

CASE NO.: 5:07-CV-14281

vs.

DISTRICT JUDGE JOHN CORBETT O'MEARA
MAGISTRATE JUDGE STEVEN D. PEPE

FACTORY TEXTILVERTRIEB GMBH,
Defendant.

REPORT AND RECOMMENDATION TO GRANT
PLAINTIFF'S MOTION FOR DISCOVERY SANCTIONS (DKT. # 27)

On August 15, 2008, Plaintiff Pelle Pelle, Inc. filed a motion for discovery sanctions, specifically for the Court to enter a judgment in favor of Plaintiff on all counts and dismissal with prejudice of Defendant Factory Textilvertrieb GMBH's counterclaims (Dkt. #27).

Defendant did not file a response. This matter was referred on August 15, 2008 for hearing and determination pursuant to 28 U.S.C. § 636 (b)(1)(A). The facts and legal arguments are adequately present in the parties' papers and the decision process would not be significantly aided by oral arguments; therefore, the motion will be resolved on the brief submitted pursuant to E.D. Mich. L.R. 7.1(e)(2).

On July 3, 2008, the Court ordered the Defendant to respond on or before August 4, 2008 to Plaintiff's January 30, 2008, First Set of Interrogatories and First Set of Request for Production of Documents as well as a February 13, 2008, Second Set of Request for Production of Documents (Dkt. #20). Also the order specifically put Defendant on notice that failure to comply with the order could, upon motion from Plaintiff's counsel, result in judgment in favor of

Plaintiff on all counts and dismissal with prejudice of Defendant's counterclaims.

As of the filing of this motion, Defendant did not respond to Plaintiff's discovery requests in violation of the July 3, 2008 order.

It is recommended that Plaintiff's motion for discovery sanctions be GRANTED and the Court enter judgment in favor of Plaintiff on all counts and dismiss with prejudice Defendant's counterclaims because of Defendant's failure to comply with this Court's Order. If the reviewing District Court adopts the Report and Recommendation, Plaintiff shall schedule a hearing with this Court to determine the amount of damages and nature of the injunctive relief sought.

The parties to this action may object to and seek review of this Report and Recommendation, but are required to file any objections within ten (10) days of service of a copy hereof as provided for in 28 U.S.C. § 636(b)(1) and E.D. Mich. LR 72.1(d)(2). Failure to file specific objections constitutes a waiver of any further right of appeal. *Thomas v. Arn*, 474 U.S. 140 (1985); *Howard v. Sec'y of Health and Human Servs.*, 932 F.2d 505 (6th Cir. 1991); *United States v. Walters*, 638 F.2d 947 (6th Cir. 1981). Filing of objections which raise some issues but fail to raise others with specificity, will not preserve all the objections a party might have to this Report and Recommendation. *Willis v. Sec'y of Health and Human Servs.*, 931 F.2d 390, 401 (6th Cir. 1991); *Smith v. Detroit Fed'n of Teachers Local*, 231, 829 F.2d 1370, 1373 (6th Cir. 1987). Pursuant to E.D. Mich. LR 72.1(d)(2), a copy of any objections is to be served upon this Magistrate Judge.

Within ten (10) days of service of any objecting party's timely filed objections, the opposing party may file a response. The response shall be not more than twenty (20) pages in length unless by motion and order such page limit is extended by the Court. The response shall address specifically, and in the same order raised, each issue contained within the objections.

Dated 10/1/08:
Ann Arbor, Michigan

S/ Steven D. Pepe
STEVEN D. PEPE
UNITED STATES MAGISTRATE JUDGE

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing ***Order*** was served on the attorneys and/or parties of record by electronic means or U.S. Mail on October 1, 2008.

s/ Jermaine Creary
Deputy Clerk